

_____ **Committee**

IOWA CODE CHAPTER 28E AGREEMENT

This Iowa Code Chapter 28E Agreement is made by and between the State of Iowa, by the Department of Administrative Services, and the _____.

In consideration of the mutual covenants contained in the Agreement, the sufficiency of which is acknowledged, it is agreed as follows:

Section 1. Identity of the Parties.

- 1.1** The Department of Administrative Services hereinafter referred to as DAS is an agency of the State of Iowa and is authorized by Iowa Code Chapter 8A to oversee the construction, operation and maintenance of monuments and memorials at the seat of government. The address for DAS is Level A, Hoover State Office Building, Des Moines, Iowa 50319.
- 1.2** The _____, hereinafter referred to as Committee is an Iowa Non-Profit Corporation. The address for Committee is _____.

Section 2. Purpose and Intent of the Agreement.

- 2.1** The parties desire that a Monument be constructed on the grounds of the Capitol Complex and is dedicated to the _____. The Committee agrees to raise the funds, and in-kind contributions and services, to construct the Monument. DAS will provide the site for the Monument and cooperate fully in the completion of the Monument.
- 2.2** Committee has developed a design for the Monument that has the approval of the _____. Any and all substantial changes to this design, both before and after award, or the construction contract, shall be reviewed and approved by DAS.
- 2.3** It is the intent of the parties that following the construction and acceptance by DAS, the State of Iowa will own the monument. DAS or its successor will maintain and preserve the Monument in proper condition utilizing the endowed maintenance account established by Section 4 of this Agreement and funded by the Committee.

Section 3. The _____ Responsibilities.

- 3.1** Committee shall raise funds, or solicit donations, to pay for all material and labor necessary to construct the Monument for the construction of the Monument. Committee shall manage all phases of the construction of the Monument

including the bidding process and shall assume all liability for the construction of the Monument until ownership is acquired by the State of Iowa.

- 3.2** Committee shall record this Agreement with the Polk County Recorder. Additionally, Committee shall file this Agreement with the Iowa Secretary of State and pay all recording fees consistent with the Iowa Code Section 28E.8.
- 3.3** All costs of the Project shall be borne by the Committee, including landscaping and provisions for funding of all future maintenance of the Project.
- 3.4** Expenses incurred in reviewing the Project, other than the expenses incident to meetings of the Capitol Planning Commission, shall be the responsibility of the Committee. No such expense shall be incurred without prior approval of the Committee.
- 3.5** In soliciting funds for the Project, the Committee may state the Project is being considered by the State of Iowa for placement on the Capitol Complex, but the Committee may not state directly or infer that the Project is in any way endorsed by the State of Iowa or that the State of Iowa is in any way responsible for the funds solicited. All fundraising or solicitation material must be approved by the DAS.
- 3.6** There will be a deadline for raising funds to cover the cost of the Project and a deadline for completion of the Project. If deadlines are not met, the agreement may be terminated at the option of the DAS.
- 3.7** The Committee according to Generally Accepted Accounting Principles will handle all funds raised by the Committee.
- 3.8** If the Project is not completed, the Committee agrees to return the remaining funds to the donors.
- 3.9** An amount determined by the DAS, but at least 10% of the cost to construct and erect the Project shall be placed in a revolving endowed maintenance account of the DAS for ongoing and long-term maintenance and conservation of the Project.
- 3.10** Committee agrees to request advance written approval from the DAS to modify an approved Project. The DAS will forward all design related changes to the Capitol Planning Commission for review and comment.
- 3.11** Maintain a perpetual fund to provide maintenance of the Monument, and as provided for in the Maintenance Manual supplied by the Committee. The Committee shall maintain any landscaping associated with the Monument.
- 3.12** Concepts, Materials, and Works Produced. Committee represents and warrants that all the concepts, materials and works produced, or provided to DAS from the Committee pursuant to the terms of this Agreement shall be wholly original with the Committee and/or that the Committee has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works combined as the Monument. The Committee represents and

warrants that the concepts, materials and works and the Committee's use of same and the exercise by the Committee and DAS of the rights granted by this Agreement shall not infringe upon any other work. The Committee also warrants that Monument does not adversely affect the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Committee represents and warrants that it is the owner of or otherwise has the right to use and distribute the ownership of the Monument, the materials owned by the Committee and any other materials, Works and methodologies used in connection with providing the services contemplated by this Agreement.

Section 4. Endowed Maintenance Account.

Committee shall establish an endowed maintenance account with DAS, the State of Iowa. The account will have an initial value of at least \$_____. The principal and interest from this fund shall be used exclusively for the maintenance of the Monument. The State of Iowa shall administer the endowed maintenance account and maintain the Monument as the Iowa Code and this fund allow.

Section 5. Insurance.

Committee will cause DAS to be included on the General Contractors and Subcontractors Commercial General Liability Insurance Contracts as a named additional insured for the mutual benefit of Committee and DAS. The liability insurance shall insure against any claim for bodily injury, death or property damage during the construction phase for the Monument. The minimum limit of the insurance coverage to be maintained by the Committee hereunder shall not limit Committee's liability under this Agreement. All personal property of every kind or description which may at any time be involved with the construction of the Monument belonging to or used by Committee, its agents contractors or others shall be at Committee's sole risk and DAS shall not be liable for any damages to said property caused in any manner whatsoever.

Section 6. Indemnity.

- 6.1** Committee shall protect, defend, indemnify, save and hold harmless the State of Iowa, DAS, its employees, agents, officers, board members and commission members against all claims, demands, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of, anyone whomsoever, and against and from any and all costs, damages and expenses, including life, bodily or personal injury, or property damage arising, directly or indirectly, out of, or from, or on account of, any accident or other occurrences in, upon, at, or from the construction of the Monument, or by any act or omission of the Committee, or any employee, agents, contractors or invitees of the State of Iowa or DAS in, upon, at or from the construction site for the Monument or its appurtenances, which accident or other occurrence shall have taken place before ownership is assumed by the State of Iowa.

- 6.2** Committee shall not, however, be liable for damages or injury to the extent and in the proportion that the same is ultimately determined to be attributable to the negligence or misconduct of the State of Iowa, DAS, or its agents, servants, employees or contractors.

Section 7. Responsibilities of the State.

DAS shall provide and appropriate a dignified site for the Monument. The Monument will be located _____. DAS will assume ownership of the Monument after construction is completed, and has been inspected and accepted by the DAS project manager.

Section 8. Financial Obligations.

The Committee shall pay the entire cost of constructing the Monument.

Section 9. Proposed Time Schedule.

- 9.1** Project Complete _____
- 9.2** Dedications _____
- 9.3** Ownership transferred to the State of Iowa _____

Section 10. Duration.

This Agreement shall become effective when the following conditions are completed:

- 10.1** The Agreement is signed by the Committee and DAS.
- 10.2** The Agreement is recorded by the Polk County Recorder.
- 10.3** The Agreement is filed with the Iowa Secretary of State.

Section 11. Contract Administration

- 11.1 Notices.** Notices under this Agreement shall be in writing and delivered to the representative of the party to receive notice (identified below) at the address of the party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be effected by certified US Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to DAS: Department of Administrative Services
Attn: _____

Des Moines IA 50319

If to Committee:

Attn: Name
Address
Phone number

Any notice or communication sent by US Mail under this Agreement shall be deemed given upon receipt as evidenced by the US Postal Service return receipt card, or if sent by overnight delivery service, upon receipt as evidenced by the signature attained by the carrier.

- 11.2 Choice of Law and Forum.** The terms and provisions of this Agreement shall be construed in accordance with the laws of the State of Iowa. Any and all litigation's or actions commenced in connection with this Agreement shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in the Polk County District Court, the action shall only be brought in the United States District Court for the Southern District of Iowa, Central Division, provided that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit of liability, which may be available to DAS or the State of Iowa.
- 11.3 Amendments.** This Agreement may be amended in writing from time to time by mutual consent. All amendments must be fully executed by all parties.
- 11.4 Integration.** This Agreement represents the entire understanding between the parties and neither party is relying on any representation, which may have been made which is not included in this Agreement.
- 11.5 Headings and Captions.** The paragraph headings and captions are for identification purposes only and do not limit or construe the contents of the paragraphs.
- 11.6 Obligations Beyond the Term of the Agreement.** This Agreement shall remain in full force and effect until terminated or canceled pursuant to its terms.
- 11.7 Assignment or Delegation.** This Agreement may not be assigned, transferred or conveyed in whole or in part without the prior consent of the other party.
- 11.8 Use of Third Parties.** DAS acknowledges that the Committee may contract with third parties for the performance on any of Committee's obligations under this Agreement provided that the Committee remains responsible for such performance. Upon request by DAS, Committee shall periodically provide a list of all third party providers it uses for the substantial performance of any of Committee's obligations under this Agreement.
- 11.9 Supersedes Former Agreements.** This Agreement supersedes all prior Agreements between DAS, the State of Iowa and _____

11.10 Waiver. Except as specifically provided for in a waiver signed by duly authorized representatives of DAS and Committee, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereto or to claim a breach with respect thereto.

11.11 Cumulative Rights. The various rights, powers, options, elections and remedies of either party, provided in this Agreement, shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of either party to pursue any other equitable or legal remedy to which either party may be entitled as long as any default remains in any way unremedied, unsatisfied, or undischarged.

11.12. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.

11.13. Authorization. Each party to this Agreement represents and warrants to the other that:

11.13.1 It has the right, under power and authority to enter into and perform its obligations under this Agreement.

11.13.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Agreement, and this Agreement constitutes a legal, valid and binding obligation upon itself in accordance with the terms of this Agreement.

11.14. Successors in Interest. All the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

11.15. Counterparts. The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

11.16. Further Assurances and Corrective Instruments. DAS and Committee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to carry out the expressed intention of this Agreement.

11.17 No Separate Legal/Administrative Entity. There is no intent by the Agreement to create a separate legal or administrative entity.

Section 12. Signatures:

In witness whereof, this Agreement is executed by the parties hereto:

The _____

Name Date: _____
Address

State of Iowa

Date: _____

Mollie K. Anderson, Director
Department of Administrative Services

STATE OF IOWA }
 }ss
COUNTY OF POLK }

On this _____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared _____, known to me to be the _____ of the Monument to Iowa's Workers Committee executing the foregoing instrument, that no seal has been procured by the agency; that the instrument was signed on behalf of the Monument to Iowa's Workers Committee by authority of the Monument to Iowa's Workers Committee, and that _____, as that officer acknowledged execution of the instrument to be the voluntary act and deed of the agency by it and by the officer voluntarily executed.

Notary Public In and For the State of Iowa

STATE OF IOWA}
 }ss
COUNTY OF POLK}

On this _____ day of _____, 200_, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Mollie K. Anderson, known to me to be the Director of the Department of Administrative Services for the State of Iowa, who did say the instrument signed by its authority conferred by Iowa Code Chapter 8A said Director of the Department of Administrative Services acknowledged the execution of this instrument which signature appears hereon, to be the voluntary act and deed of the State of Iowa, Department of Administrative Services and by it voluntarily executed.

Notary Public In and For the State of Iowa